which were then claimed by a firm creditor. *Held*, that the firm creditor is entitled to priority over the separate creditor as to these assets. *Codville Georgeson Co.* v. *Smart*, 10 Ont. W. Rep. 466.

In the distribution of firm assets a firm creditor is entitled to priority over an individual creditor of one member of the firm, though the other member is an infant. *Lovell* v. *Beauchamp*, [1894] A. C. 607; see 8 HARV. L. REV. 361. The rule of priority has been held to apply in the case of the bankruptcy of an ostensible firm. *Ex parte Hayman*, 8 Ch. D. 11; *Kelly* v. *Scott*, 49 N. Y. 595. The English case distinctly puts this on the statutory ground of reputed ownership, which could not apply to the principal case where there is no bankruptcy. The preference of firm creditors is said to result from the equitable lien which each partner has on the firm assets. *Case* v. *Beauregard*, 99 U. S. 119. But in the case of an ostensible partnership there can be no such lien in fact; and no good reason appears why the separate creditors should be estopped from denying its existence. See 10 HARV. L. REV. 49. There are accordingly some cases which hold that a prior attaching creditor, whether he gave credit to the ostensible firm or to the actual member personally, gets a preference over a subsequently attaching creditor. *Himmelreich* v. *Shaffer*, 182 Pa. St. 201.

PATENTS — INFRINGEMENT — COMPENSATORY DAMAGES IN EQUITY. — On January 27, 1902, the defendants, after several years of unlicensed use, abandoned two machines which infringed the complainant's patent. On November 1, 1901, the complainant established with third persons a general uniform license rate, payable quarterly, the first instalment due December 10, 1901. No evidence was offered of any profits accruing to the defendants from the infringement. *Held*, that the complainant may recover the amount of one quarter's license for two machines, with interest from January 27, 1902. *Diamond Stone Sawing Mach. Co.* v. *Brown*, 155 Fed. 753 (Circ. Ct., E. D. N. Y.).

The federal courts, in exercising equity jurisdiction over patent infringements, formerly measured the recovery solely by the defendant's profits. See *Root* v. *Railway Co.*, 105 U. S. 189, 194. However, U. S. Rev. Stat., § 4921, enlarges the equity remedy, by entitling the complainant to recover the damages he has sustained "in addition to the profits to be accounted for by the defendant." Under this provision, compensatory damages fixed by license fees were awarded a complainant, it appearing that the infringer obtained no profits. *Marsh* v. *Seymour*, 97 U. S. 348. The present decision goes one step further, awarding compensatory damages without regard to the defendant's profits. The license fee is the accepted measure of the complainant's loss, but only where such fee is general and uniform, and established prior to the infringement. See *Rude* v. *Westcott*, 130 U. S. 152, 165. Since the license fee here was not established until November 1, 1901, and was the only evidence of the complainant's loss, the court rightly refused damages for infringements perpetrated before that date. Where license fees are the measure of damages, the courts have awarded interest from the time such fees fell due. *Locomotive Safety Truck Co.* v. *Penn. R. R. Co.*, 2 Fed. 677; *McNeely* v. *Williames*, 96 Fed. 978. The present decision is a departure from these cases.

PROXIMATE CAUSE — INTERVENING CAUSES — OWNER INJURED IN SAVING PROPERTY ENDANGERED BY DEFENDANT'S NEGLIGENCE. — A spark from the defendant's engine ignited conbustible materials allowed by the defendant to collect along its track. The plaintiff's intestate, seeing her buildings in danger, tried to extinguish the fire and, though using due care, was burned to death. *Held*, that the plaintiff can recover, since the defendant's negligence was the proximate cause of the death. *Illinois Central R. R. Co.* v. *Siler*, 82 N. E. 362 (Ill.).

For a discussion of the principles involved, see 16 HARV. L. REV. 379.

RECEIVERS — APPOINTMENT BY STATE COURT AFTER APPOINTMENT BY FEDERAL COURT. — New Jersey creditors of a New York corporation secured

the appointment of receivers for its property by the federal circuit court. Then the attorney-general of New York, in the course of a suit to dissolve the corporation pursuant to statute, because of its insolvency for a year, moved for the appointment of receivers for its property. A statute permits the appointment in a dissolution suit. *Held*, that receivers will be appointed, but they are to request the federal court to relinquish control, and are not to molest the federal receivers. *People* v. *N. Y. City Ry.*, 107 N. Y. Supp. 247 (Sup. Ct.). See NOTES, p. 279.

SALES — IMPLIED WARRANTIES — OBLIGATIONS OF VENDOR OF STOCK. — The appellant purchased from the appellee shares in a certain mining corporation. The corporation proved to be a *de facto* one, and the shares part of an illegal over-issue. The appellant sought to rescind the sale. *Held*, that the sale is valid, since the vendor of stock impliedly warrants only his title to the stock and its genuineness. *Burwash* v. *Ballou*, 82 N. E. 355 (Ill.).

The vendor of stock impliedly warrants his ownership in the stock certificate, that it is genuine, and that he is authorized to transfer the title thereto. If the vendee desires further protection, he must ordinarily exact an express warranty. *Higgins* v. *Ill. Trust and Savings Bank*, 193 Ill. 394. Since the vendor and vendee are presumably on an equal footing, there seems to be no element of unfairness which demands the implication of further warranty that the stock sold is stock of a *de jure* corporation. *Harter* v. *Eltzroth*, 111 Ind. 159. Where there is a contract for the sale of bonds of which there is only an unauthorized issue outstanding, delivery of bonds of such issue is sufficient. *Otis* v. *Cullum*, 92 U. S. 447. Where, however, there are both authorized and unauthorized issues, delivery of bonds of the illegal issue, though in good faith, is not a sufficient compliance with the terms of the contract, since it is presumed that the vendee contracted for bonds of the valid issue. *Meyer* v. *Richards*, 163 U. S. 385. The same rule would seem to apply to issues of stock, though the present case fails to notice the distinction. *Cf. Lincoln* v. *Express Co.*, 45 La. Ann. 729; *contra*, *People's Bank* v. *Kurtz*, 99 Pa. St. 344.

STATES — VALIDITY OF STATE BOND STOLEN AFTER REDEMPTION BEFORE MATURITY. — A statute authorized an issue of negotiable state bonds, redeemable before maturity, and provided that all bonds redeemed should be destroyed. A bond which had been redeemed, but not cancelled or destroyed, was stolen and came into the possession of the relator, a holder in due course. *Held*, that *mandamus* lies to compel the state treasurer to redeem the bond again. *Ehrlich* v. *Jennings*, 58 S. E. 922 (S. C.). See NOTES, p. 282.

STATUTES — INTERPRETATION — REQUIREMENT OF KNOWLEDGE IN CONVICTIONS UNDER THE SAFETY APPLIANCE ACT. — Section 2 of the Safety Appliance Act, 27 Stat. at L. 531, makes it unlawful for any common carrier "to haul, permit to be hauled or used on its line any car used in moving interstate traffic" not equipped with workable automatic couplers. In an action thereunder, the government proved defects in the couplers without proving the defendant's knowledge thereof. *Held*, that to sustain a conviction, the evidence must prove beyond a reasonable doubt that the carrier either had discovered the defects, or could have discovered them by the exercise of the utmost care. *United States* v. *Illinois Cent. R. R. Co.*, 156 Fed. 182 (Dist. Ct., W. D. Ky.); *contra*, *United States* v. *C., B. & Q. Ry. Co.*, 156 Fed. 180 (Dist. Ct., D. Neb.).

So far as it is necessary to prevent injury to persons or property, the regulation and control of railroads is within the police power of the states. *Jones* v. *Alabama & Vicksburg Ry. Co.*, 72 Miss. 22. The purpose of the Safety Appliance Act, as set forth in the title, is to promote the safety of employees and travellers. It is analogous to an exercise of state police power. No *mens rea* is required to convict for offenses against police regulations involving no moral turpitude. *Com.* v. *Wentworth*, 118 Mass. 441. The present case can therefore be supported only by reading into the act a requirement of knowledge. It is settled that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. See